From: "Brown, Leah" < Brown.Leah@epa.gov>

To: "Croxton, David" < Croxton.David@epa.gov>
"Zell, Christopher" < zell.christopher@epa.gov>

CC: "Mann, Laurie" < mann.laurie@epa.gov>

Date: 10/20/2017 12:51:43 PM

Subject: RE: INTERNAL and DELIBERATIVE - draft Deschutes Briefing Paper for Dan and Jim

Attachments: Deschutes TMDL NOI Briefing\_draft 10162017\_LB.docx

### Hi Chris,

Thanks so much for putting this together. My thoughts, along with options, are attached. I'm not sure if this is the only briefing paper we'll be using or if there's a second recommendation paper that will be forthcoming, so let's touch base on that when you get a chance.

I have a few other questions, but looks like we have time scheduled for early next week, so I'll wait until then.

Have a great weekend,

Leah

From: Croxton, Dave

**Sent:** Friday, October 20, 2017 11:03 AM **To:** Zell, Christopher; Brown, Leah

Cc: Mann, Laurie

Subject: RE: INTERNAL and DELIBERATIVE - draft Deschutes Briefing Paper for Dan and Jim

HI Chris,

Well-written document. I have some minor edits in red in the first 3 pages. FOIA exemption (b)(5)

thanks

From: Zell, Christopher

Sent: Monday, October 16, 2017 2:14 PM

To: Brown, Leah <Brown.Leah@epa.gov>; Croxton, Dave <Croxton.David@epa.gov>

Cc: Mann, Laurie <mann.laurie@epa.gov>

Subject: INTERNAL and DELIBERATIVE - draft Deschutes Briefing Paper for Dan and Jim

ATTORNEY-CLIENT PRIVILEGE

Your input, perspectives, and 'smithing' is requested at your earliest convenience [].

Thank you,

Chris



# Region 10 Briefing Paper for the Office of the Regional Administrator

MEETING/EVENT TITLE:

"Deschutes TMDL Notice of Intent from Northwest Environmental Advocates – How to Respond"

MEETING DATE: 11/7/2017 10:00 am - 10:45 am

LOCATION: Dan's Office

CONFERENCE CALL LINE: (b) (6)

PREPARED BY: Chris Zell and Leah Brown

DATE: 10/19/2017

INVITED EPA ATTENDEES: Dan Opalski; Jim Havard; Jim Curtin; Holly Arrigoni; Chris Lewicki; Dave Croxton;

Laurie Mann; Leah Brown; Jennifer Byrne; Cara Steiner-Riley BL11; and Chris Zell

#### I. REQUESTING OFFICE

Office of Water and Watersheds / Watershed Unit

#### II. TIMING



### IV. BACKGROUND/HISTORY [BL4]

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area (186 mi2) is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington. The study area includes the major cities or towns of Olympia, Lacey, Tumwater, and Rainier. Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. The submitted TMDL package included a

request that EPA approve allocations for 71 (actually 73) Water Quality Limited Segments (WQLSs) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment). Beginning in February 2016, EPA has discussed with Ecology opportunities to remedy legal and technical shortcomings of the TMDL that have been identified by both EPA (WU, ORC) and potential plaintiffs (NWEA, Squaxin Island Tribe). Such TMDL shortcomings or issues are provided as Appendix A to this brief.



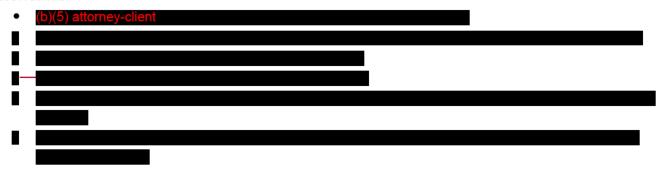
## Deschutes (WA) TMDL Key Dates BL9

Dates	Event
2004	Sampling Plan Completed
2003 2007	Monitoring
2007 2014	TMDL Development
April 2014	Announcement to Submit Freshwater Components Only
December 2015	Ecology sSubmitted TMDL to EPA
February - October 2016	Concerns EPA shared concerns with Ecology
June 2016	Squaxin Island Tribe – Tribal Coordination Meeting
August 2016	Ecology/EPA Discussion with NWEA in Portland, OR
September 2016	<u>EPA Rrequested</u> Ecology to-Withdraw TMDL
January 2017	Puget Sound FOIA received from NWEA
March 2017	EPA Developed Bacteria TMDLs
June 2017	EPA & Ecology Negotiate <u>d</u> <u>"</u> Resubmit <u>"</u> Letter
July 2017	EPA Received Resubmit Letter from Ecology
August 2017	EPA Sshared Draft Approval Letter with HQ
August 2017	EPA Received Deschutes NOI from NWEA
October 5, 2017	EPA Withdrawal Discussion with Ecology
October 13, 2017	EPA/Ecology Discussion with NWEA re: NOI

### V. KEY ISSUES

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Appendix A itemizes EPA and NWEA concerns related to the Deschutes TMDL. In addition, please note these observations:



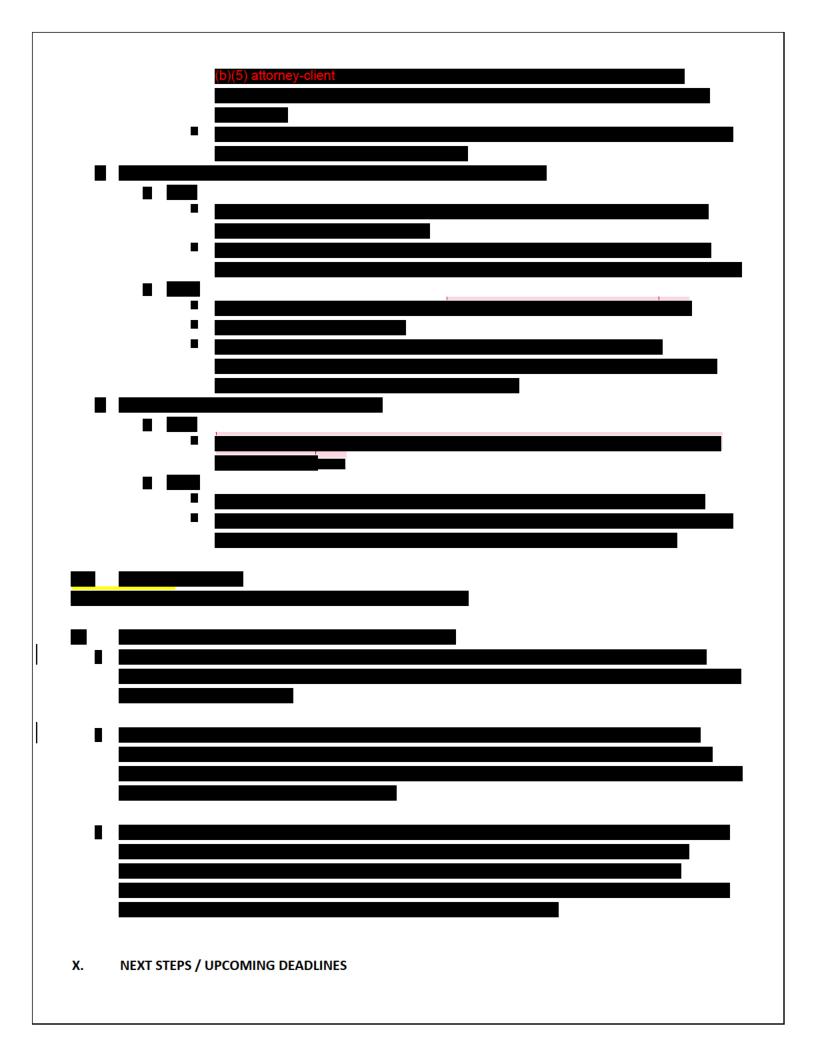
## VI. REGULATORY SUMMARY (if appropriate)

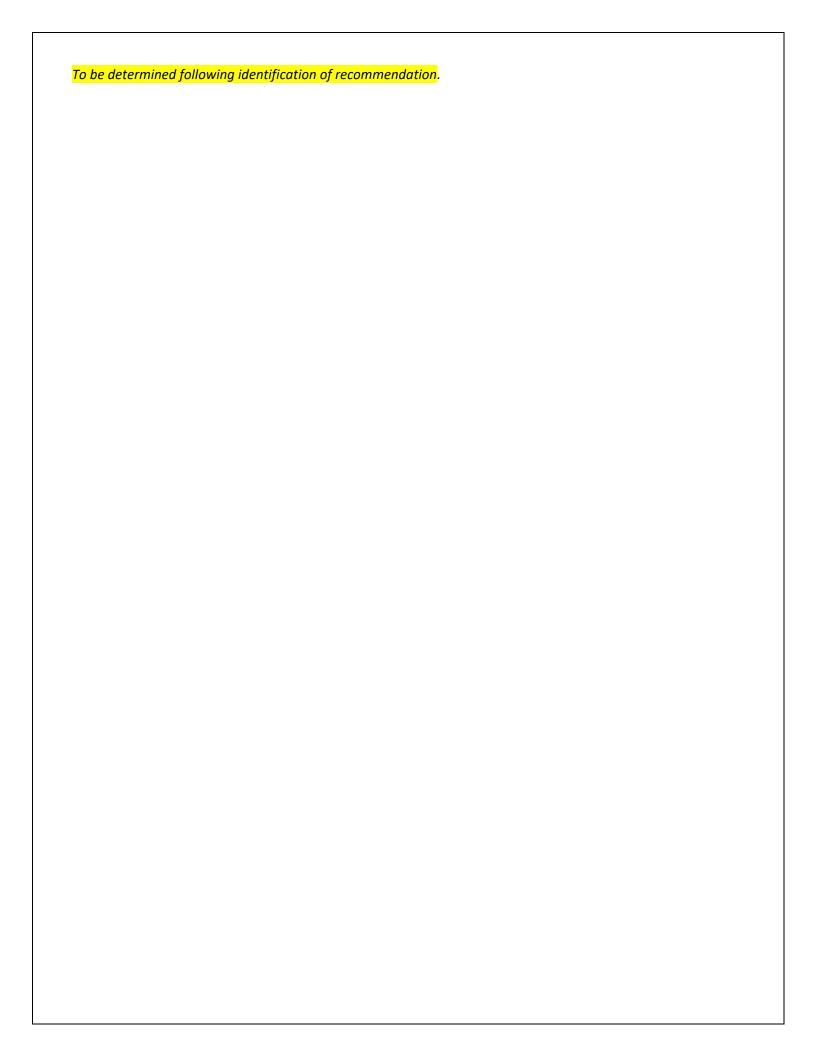
40 CFR 130.7(d)(2): "The Regional Administrator shall either approve or disapprove such listing and loadings not later than 30 days after the date of submission...." [BL10]

### VII. ADDITIONAL POLICY AND LEGAL INFORMATION

Section 303(d)(2) of the CWA requires EPA to "either approve or disapprove [a TMDL] not later than thirty days after the date of submission." If EPA disapproves a TMDL, Section 303(d)(2) requires EPA to issue a substitute TMDL within 30 days of disapproval.

Ecology submitted the Deschutes River TMDL in December 2015, and EPA has not acted. (b)(5) attorney-client





## (b)(5) attorney-client



#### **APPENDIX A - NWEA Concerns**

Ecology scheduled a meeting with Nina Bell on August 2, 2016 in Portland, OR (at OR Ops office) to obtain NWEA feedback on the Deschutes TMDL as she had indicated unspecified concerns with the TMDL in previous discussions. Laurie Mann and Chris Zell participated in the meeting at the request of Ecology. Overall, Nina expressed an unfavorable opinion of the TMDL and summarized that the TMDL will not change or improve existing conditions. Nina did offer a potential 'carve-out' from the NCC remand for temperature segments of the Deschutes if buffer requirements were more detailed and were placed into the load capacity/allocation section of the TMDL. Nina explained the DO segments (and maybe pH by reference) of the TMDL were too problematic/flawed and should not move forward (no 'carve-out').

#### **NWEA Ecology** EPA (1) Unconvinced that TMDL will change (1) An approved TMDL may help in We primarily listened and took notes. Chris existing water quality conditions. retiring water rights and obtaining asked Nina to elaborate on Columbia dioxin (2) Downstream waters not protected grant funds. An approved TMDL may TMDL and checkpoint approach. (self-stated). Failing to protect DS help bring government partners to the waters is a big deal. TMDL is kind of a table such as Thurston County and get shell because it does not deal with DS conservation districts to work waters or tributaries. (3) Buffers show up in implementation (2) Acknowledged the TMDL has some rather than allocation section. deficiencies and is working with EPA (4) Need to convert shade values into on some issues. Benefits of TMDL are real, implementable surrogates. How relatively minor. (3) TMDL was split because of the was 75 ft. buffer determined? Vertical and areal density is important. What is contentious nature of Capital Lake and mature vegetation? Budd Inlet. Data would become (5) The entire TMDL seems to be a outdated if Ecology waited to do all surrogate. Suite of shade surrogates waters at once. Evidence is pointing primarily to shade and buffers for the may be needed. Why was channel width not allocated as it was part of Deschutes. NCC demonstration. Any buffers that Ecology pays for (6) Compliance with permit seems to be would have to meet NMFS buffer rule compliance with TMDL as WLAs are (100 ft rather than 75 ft.). mostly existing permit conditions or restated WQS. WLAs do not seem to add value. (7) Using shade as surrogate for parameters other than temperature creates holes. TMDL does not assess if current landuse practices, such as forestry, contribute to sediment impairments. (9) Reasonable Assurance section is inconsistent. Should consider actions that are not already occurring. Deferring to Fish and Forest assurances is a problem. (10) TMDL cites nutrient hotspots and impacts but does not limit nutrients. TMDL advocates a 'we'll evaluate later' approach to septics and other nutrient sources. (11) Better to wait until Budd Inlet and Capital Lake TMDL are complete. Maybe move forward with temperature segments only. (12) Lack of NCC is not an excuse to do nothing. Use the data we have and

sediment fines target. How does in- stream fine targets align with WQS?
were not perfect. (13) TMDL does not justify in-stream sediment fines target. How does in- stream fine targets align with WQS?
(13) TMDL does not justify in-stream sediment fines target. How does instream fine targets align with WQS?
stream fine targets align with WQS?
stream fine targets align with WQS?
(4.4) Facility to be the characters (5.5)
(14) Ecology is hesitant to address Capitol
Lake because of benefits as sediment
trap, better than a muddy estuary,
expensive infrastructure changes (Lake
outlet works, MS4, LOTT facility).
(15) Checkpoint approach used in
Columbia dioxin TMDL is an appealing
large watershed approach.
(16) Ecology should not get credit for a
TMDL when the allocations do not
resolve the DO and nutrient issue.
(17) Margin of safety and antidegradation
section is confusing
(18) Would be willing to consider
temperature carve out of NCC
remand. TMDLs for DO, pH should not
move forward until Budd Inlet is
completed. Opinion on sediment was